

## **Assembly Bill No. 739**

### **CHAPTER 387**

An act to amend Section 706.030 of the Code of Civil Procedure, and to amend Sections 4200, 4201, 4204, 5235, 5237, 5240, 5247, 5253, and 17309 of, and to add Sections 17311, 17311.5, and 17311.7 to, the Family Code, relating to child support, and making an appropriation therefor.

[Approved by Governor September 16, 2003. Filed  
with Secretary of State September 17, 2003.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 739, Jackson. Child support: State Disbursement Unit.**

Existing law obligates a parent to support his or her child. Existing federal law, in connection with child support enforcement, requires that the state implement a state disbursement unit to retain the state's eligibility for certain federal funds. Existing law creates within the Department of Child Support Services, in conjunction with the Franchise Tax Board, the California Child Support Automation System, which operates in all California counties and includes the State Disbursement Unit.

This bill would create the Child Support Payment Trust Fund in the State Treasury, which would be administered by the Department of Child Support Services. The bill would authorize the state to deposit payments received by the State Disbursement Unit, as specified, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. The bill would provide that the fund is continuously appropriated, and that the state share of interest and other earnings accruing on the fund are available to offset certain General Fund costs according to a specified priority.

This bill would also authorize the department to establish and administer a revolving account within the Child Support Payment Trust Fund in an amount not to exceed \$600,000,000 to ensure the timely disbursement of child support. The bill would authorize the department to enter into a trust agreement with a trustee or fiscal intermediary to receive or disburse child support collections, and would further provide that any trust accounts created by the trust agreements may be held outside the State Treasury. The bill would require the auditor and controller of each county to perform closeout activities as directed by the Department of Child Support Services. The bill would require those persons and the local child support agency director to transfer

undisbursed child support collections and the interest earned on those funds to the Department of Child Support Services for deposit in the Child Support Payment Trust Fund. By imposing additional duties on local officers and employees, the bill would create a state-mandated local program.

The bill would enact other related changes. The bill would also change references to the Child Support Centralized Collection and Distribution Unit to refer to the State Disbursement Unit.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A “withholding order for support” is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) The local child support agency may issue a withholding order for support on a notice of levy pursuant to Section 17522 of the Family Code to collect a support obligation.

(1) When the local child support agency issues a withholding order for support, a reference in this chapter to a levying officer is deemed to mean the local child support agency who issues the withholding order for support.

(2) Service of a withholding order for support issued by the local child support agency may be made by first-class mail or in any other manner described in Section 706.101. Service of a withholding order for support issued by the local child support agency is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101, or if service is by first-class mail, service is complete as specified in Section 1013.



(3) The local child support agency shall serve upon the employer the withholding order for support, a copy of the order, and a notice informing the support obligor of the effect of the order and of his or her right to hearings and remedies provided in this chapter and in the Family Code. The notice shall be accompanied by the forms necessary to obtain an administrative review and a judicial hearing and instructions on how to file the forms. Within 10 days from the date of service, the employer shall deliver to the support obligor a copy of the withholding order for support, the forms to obtain an administrative review and judicial hearing, and the notice. If the support obligor is no longer employed by the employer and the employer does not owe the support obligor any earnings, the employer shall inform the local child support agency that the support obligor is no longer employed by the employer.

(4) An employer who fails to comply with paragraph (3) shall be subject to a civil penalty of five hundred dollars (\$500) for each occurrence.

(5) The local child support agency shall provide for an administrative review to reconsider or modify the amount to be withheld for arrearages pursuant to the withholding order for support, if the support obligor requests a review at any time after service of the withholding order. The local child support agency shall provide the review in the same manner and timeframes provided for resolution of a complaint pursuant to Section 17800 of the Family Code. The local child support agency shall notify the employer if the review results in any modifications to the withholding order for support. If the local child support agency cannot complete the administrative review within 30 calendar days of receipt of the complaint, the local child support agency shall notify the employer to suspend withholding any disputed amount pending the completion of the review and the determination by the local child support agency.

(6) Nothing in this section prohibits the support obligor from seeking a judicial determination of arrearages pursuant to subdivision (c) of Section 17256 of the Family Code or from filing a motion for equitable division of earnings pursuant to Section 706.052 either prior to or after the administrative review provided by this section. Within five business days after receiving notice of the obligor having filed for judicial relief pursuant to this section, the local child support agency shall notify the employer to suspend withholding any disputed amount pending a determination by the court. The employer shall then adjust the withholding within not more than nine days of receiving the notice from the local child support agency.

(c) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1),



(2), or (3) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to that order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

(4) An employer who willfully fails to withhold and forward support pursuant to a valid earnings withholding order for support issued and served upon the employer pursuant to this chapter is liable to the support obligee, as defined in Section 5214 of the Family Code, for the amount of support not withheld, forwarded, or otherwise paid to the support obligee.

(5) Notwithstanding any other provision of law, an employer shall send all earnings withheld pursuant to a withholding order for support to the levying officer or the State Disbursement Unit as described in Section 17309 of the Family Code within the time period specified by federal law.

(6) Once the State Disbursement Unit as described in Section 17309 of the Family Code is operational, all support payments made pursuant to an earnings withholding order shall be made to that unit.

(7) Earnings withheld pursuant to an earnings withholding order for support shall be credited toward satisfaction of a support judgment as specified in Section 695.221.

SEC. 2. Section 4200 of the Family Code is amended to read:

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of children for whom support may be ordered, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose. Once the State Disbursement Unit is implemented pursuant to Section 17309, all payments shall be directed to the State Disbursement Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the welfare recipient in any proceeding to enforce the order.

SEC. 3. Section 4201 of the Family Code is amended to read:



4201. In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a child for whom support may be ordered, the court may do either or both of the following:

(a) Direct that the payments shall be made to the county officer designated by the court for that purpose. Once the State Disbursement Unit is implemented pursuant to Section 17309, all payments shall be directed to the State Disbursement Unit instead of the county officer designated by the court.

(b) Direct the local child support agency to appear on behalf of the minor children in any proceeding to enforce the order.

SEC. 4. Section 4204 of the Family Code is amended to read:

4204. Notwithstanding any other provision of law, in any proceeding where the court has made an order requiring the payment of child support to a person having custody of a child and the child support is subsequently assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code or the person having custody has requested the local child support agency to provide child support enforcement services pursuant to Section 17400, the local child support agency may issue a notice directing that the payments shall be made to the local child support agency, another county office, or the State Disbursement Unit pursuant to Section 17309. The notice shall be served on both the support obligor and obligee in compliance with Section 1013 of the Code of Civil Procedure. The local child support agency shall file the notice in the action in which the support order was issued.

SEC. 5. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. If the employer withheld the support but failed to forward the payments to the obligee, the employer shall be liable for the payments, including interest, as provided in Section 5241.

(b) Within 10 days of service of a substitution of payee on the employer, the employer shall forward all subsequent support to the governmental entity or other payee that sent the substitution.

(c) The employer shall send the amounts withheld to the obligee within the timeframe specified in federal law and shall report to the obligee the date on which the amount was withheld from the obligor's wages.



(d) The employer may deduct from the earnings of the employee the sum of one dollar (\$1) for each payment made pursuant to the order.

(e) Once the State Disbursement Unit as required by Section 17309 is operational, the employer shall send all earnings withheld pursuant to this chapter to the State Disbursement Unit instead of the obligee.

SEC. 6. Section 5237 of the Family Code is amended to read:

5237. (a) Except as provided in subdivisions (b) and (c), the obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the obligee is receiving support payments from the State Disbursement Unit as required by Section 17309, the obligee shall notify the State Disbursement Unit instead of the employer of the obligor as provided in subdivision (a).

(d) If the employer, designated county officer, or the State Disbursement Unit is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer, designated county officer, or State Disbursement Unit, of a change of address, the employer, designated county officer, or State Disbursement Unit shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

SEC. 7. Section 5240 of the Family Code is amended to read:

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage



assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act or the State Disbursement Unit is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency or the State Disbursement Unit of a change in the obligee's address.

SEC. 8. Section 5247 of the Family Code is amended to read:

5247. Neither the local child support agency nor an employer shall be subject to any civil liability for any amount withheld and paid to the obligee, the local child support agency, or the State Disbursement Unit pursuant to an earnings assignment order or notice of assignment.

SEC. 9. Section 5253 of the Family Code is amended to read:

5253. Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment order requiring the employer of the obligor to pay to the obligee or the State Disbursement Unit that portion of the earnings of the obligor due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage or past due support amount.

SEC. 10. Section 17309 of the Family Code is amended to read:

17309. Effective October 1, 1998, the state shall operate a State Disbursement Unit as required by federal law (42 U.S.C. Secs. 654 (27), 654a(g), and 654b).

SEC. 11. Section 17311 is added to the Family Code, to read:

17311. (a) The Child Support Payment Trust Fund is hereby created in the State Treasury. The department shall administer the fund.

(b) (1) The state may deposit child support payments received by the State Disbursement Unit, including those amounts that result in overpayment of child support, into the Child Support Payment Trust Fund, for the purpose of processing and providing child support payments. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the purposes of disbursing child support payments from the State Disbursement Unit.

(2) The state share of the interest and other earnings that accrue on the fund shall be available to the department and used to offset the following General Fund costs in this order:



(A) Any transfers made to the Child Support Payment Trust Fund from the General Fund.

(B) The cost of administering the State Disbursement Unit, subject to appropriation by the Legislature.

(C) Other child support program activities, subject to appropriation by the Legislature.

(c) The department may establish and administer a revolving account in the Child Support Payment Trust Fund in an amount not to exceed six hundred million dollars (\$600,000,000) to ensure the timely disbursement of child support. This amount may be adjusted by the Director of Finance upon notification of the Legislature as required, to meet payment timeframes required under federal law.

(d) It is the intent of the Legislature to provide transfers from the General Fund to provide startup funds for the Child Support Payment Trust Fund so that, together with the balances transferred pursuant to Section 17311.7, the Child Support Payment Trust Fund will have sufficient cash on hand to make all child support payments within the required timeframes.

SEC. 12. Section 17311.5 is added to the Family Code, to read:

17311.5. The department may enter into a trust agreement with a trustee or fiscal intermediary to receive or disburse child support collections. The trust agreement may contain provisions the department deems reasonable and proper for the security of the child support payments. Any trust accounts created by the trust agreements may be held outside the State Treasury.

SEC. 13. Section 17311.7 is added to the Family Code, to read:

17311.7. (a) Upon the transfer of collection and disbursement activities from each county to the State Disbursement Unit, the auditor and controller of each county shall perform closeout activities as directed by the Department of Child Support Services to ensure accounting for all collections, obligations, and payments. All child support collections remaining undisbursed and interest earned on these funds shall be transferred to the Department of Child Support Services for deposit in the Child Support Payment Trust Fund. The local child support agency director and auditor and controller shall perform these activities based on guidelines provided by the department and shall certify the results of these activities in a report submitted to the department within one year of transfer of collection and distribution functions to the state.

(b) The department may contract for the audit of each county report submitted under subdivision (a). Each audit shall be completed within one year after the receipt of the report from the county.





SEC. 14. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

